

******DRAFT 12-09******
STATE OF MAINE
SUPREME JUDICIAL COURT

AMENDMENTS TO THE
MAINE RULES OF APPELLATE PROCEDURE

Effective: -----, 2010

All of the Justices concurring therein, the following amendments to Rule 19 of the Maine Rules of Appellate Procedure are hereby adopted to be effective on the date indicated above. The specific amendments to Rule 19 are stated below. To aid in understanding of these amendments, an Advisory Note appears after the text of the amendments. The Advisory Note states the reason for recommending the amendments to Rule 19, but it is not part of the amendments to Rule 19 adopted by the Court.

1. Rules 19(a) and (d)(1) of the Maine Rules of Appellate Procedure are amended to read as follows:

(a) Appeals Covered. This rule covers criminal appeals, which are subject to preliminary review and full consideration as a matter of discretion by the Law Court, other than appeals from sentences of a year or more that are addressed by M.R. App. P. 20. The appeals covered by this rule include:

- An appeal from a ruling by the Superior Court, but not by the District Court, on a motion to correct or reduce a sentence, pursuant to M.R. Crim. P. 35(a) or (c), where the appeal is taken by the defendant;

- An appeal by a person whose probation is revoked by the Superior Court, but not by the District Court, where the appeal is authorized pursuant to 17-A M.R.S. § 1207(2);

- An appeal by a person whose supervised release is revoked by the Superior Court, but not by the District Court, where the appeal is authorized pursuant to 17-A M.R.S. § 1233;

- An appeal by a person determined to have inexcusably failed to comply with a court-imposed deferment requirement and thereafter sentenced, where the appeal is authorized pursuant to 17-A M.R.S. § 1348-C;

- An appeal by a person whose administrative release is revoked by the Superior Court, but not by the District Court, where the appeal is authorized pursuant to 17-A M.R.S. § 1349-F;

- An appeal from a final judgment in a post-conviction review proceeding pursuant to 15 M.R.S. § 2131(1), where the appeal is taken by the petitioner;

- An appeal from a final judgment in an extradition proceeding pursuant to 15 M.R.S. § 210-A, where the appeal is taken by the petitioner;

- An appeal from an order on a motion to order DNA analysis, pursuant to 15 M.R.S. § 2138(6) or a motion for a new trial based upon DNA analysis, pursuant to 15 M.R.S. § 2138(11), where the appeal is taken by the convicted person-; and

- An appeal from an order on a post-judgment motion seeking a court determination of factual innocence and correction of court records and related criminal justice records, or a subsequent vacating of that determination and record

correction, pursuant to 15 M.R.S. § 2184(1), where the appeal is taken by the person who filed a motion or on whose behalf the motion was filed.

(d)(1) *Duty of Reporter to Prepare and File Transcript of Proceeding Subject to Appeal.* Unless the Law Court otherwise directs, within 56 days of receipt of a copy of the notice of appeal and transcript order form, the reporter shall prepare and file a transcript of the hearing that is the subject of the appeal in the event that a hearing on the matter was held and recorded. The transcript shall be filed in accordance with M.R. App. P. 6(c). Unless the Law Court orders otherwise, or a certificate of probable cause issues, no other transcript of any related proceeding shall be prepared pending ruling on the request for a certificate of probable cause. The hearings for which a transcript shall be prepared pursuant to this subdivision are:

(i) For an appeal from a ruling by the Superior Court on a motion for correction or reduction of sentence, the hearing, if any, on the motion for correction or reduction of sentence.

(ii) For an appeal from a ruling by the Superior Court on a motion for revocation of probation, the hearing on the motion for revocation of probation.

(iii) For an appeal from a ruling by the Superior Court on a motion for revocation of supervised release, the hearing on the motion for revocation of supervised release.

(iv) For an appeal from a ruling of inexcusable failure to comply with a court-imposed deferment requirement, the hearing on the motion for termination of the period of deferment or the hearing at the conclusion of the period of deferment.

(v) For an appeal from a ruling by the Superior Court on a motion for revocation of administrative release, the hearing on the motion for revocation of administrative release.

(vi) For an appeal from a final judgment in a post-conviction review proceeding, the hearing on the motion for post-conviction relief, if any.

(vii) For an appeal from a ruling on a motion to order DNA analysis, the hearing on the motion to order DNA analysis.

(viii) For an appeal from a ruling on a motion for new trial based upon DNA analysis results, the hearing on the motion for a new trial based upon DNA analysis results.

(ix) For an appeal from an order on a post-judgment motion seeking a court determination of factual innocence and correction of the court records and related criminal justice agency records, the hearing on the post-judgment motion.

(x) For an appeal from an order vacating the earlier order certifying a determination of factual innocence and modifying any record correction earlier made, the hearing relating to the fraud or misrepresentation.

Advisory Note – 2010

M.R. App. P. 19(a) and (d)(1). The amendments add to Rule 19 two new discretionary appeals found in 15 M.R.S. § 2184(1) created in the 2009 First Regular Session of the 124th Maine State Legislature (P.L. 2009, ch. 308, § 1, effective September 12, 2009) as part of a new statutory post-judgment relief mechanism for person's whose identity has been stolen and falsely used by another person in, as relevant here, a criminal proceeding. The first of the discretionary appeals provides for a conditional appeal by the person whose post-judgment motion seeking a court determination of factual innocence and correction of court records and related criminal justice records (or in whose behalf such motion was filed) in the event the motion is denied by the court at the conclusion of the hearing required under 15 M.R.S. § 2183(5). The second of the discretionary appeals provides for a conditional appeal by that person in the event the court subsequently vacates its earlier order granting the person's motion (or in whose behalf such motion was filed) based upon fraud or misrepresentation at the conclusion of a hearing under 15 M.R.S. § 2183(7).

2. These amendments to Rule 19 shall be effective -----.

Such amendments to Rule 19 as thus adopted shall be recorded in the Maine Reporter.

Dated: -----

FOR THE COURT¹

LEIGH I. SAUFLEY
Chief Justice

DONALD G. ALEXANDER
JON D. LEVY
WARREN M. SILVER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
Associate Justices

¹ This Rules Amendment Order is approved after conference of the Court, all Justices concurring therein.